



California Regional Water Quality Control Board

Santa Ana Region



Terry Tamminen
Secretary for
Environmental
Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
(909) 782-4130 • Fax (909) 781-6288
<http://www.swrcb.ca.gov/rwqcb8>

Arnold Schwarzenegger
Governor

May 4, 2004

Peter A. Nyquist
Weston Benshoof Rochefort Rubalcava MacCuish LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, CA 90071

Darren M. Salvin
Parker Milliken Clark O'Hara & Samuelian LLP
333 South Hope Street, Twenty-Seventh Floor
Los Angeles, CA 90071

Richard A. Dongell
Dongell Lawrence Finney LLP
707 Wilshire Blvd., Twenty-Seventh Floor
Los Angeles, CA 90017

**TRANSMITTAL OF CLEANUP AND ABATEMENT ORDER NO. R8-2004-0042 FOR PYRO
SPECTACULARS, INC., THOMAS O. PETERS REVOCABLE TRUST, THOMAS O. PETERS
AND WHITTAKER CORPORATION**

Dear Messrs. Nyquist, Salvin and Dongell:

Enclosed is Cleanup and Abatement Order (CAO) No. R8-2004-0042 for the investigation and cleanup of perchlorate at the five-acre parcel located at 2298 West Stonehurst Drive, Rialto, California. The enclosed document includes all revisions that were made to the CAO during the Regional Board's hearing on April 30, 2004.

By copy of this letter, Interested Parties are advised that Cleanup and Abatement Order No. R8-2004-0042 will be available on the Regional Board's website:
<http://www.swrcb.ca.gov/rwqcb8>.

If you have any questions, please contact me at (909) 782-3286 or Ann Sturdivant at (909) 782-4904.

Sincerely,

for
Kurt V. Berchtold
Assistant Executive Officer

Transmittal of
CAO No. R8-2004-0042

- 2 -

May 4, 2004

Enclosures:

1. Cleanup and Abatement Order No. R8-2004-0042
2. Interested Parties Mailing List

cc w/enclosures:

Regional Board
Phil Wyels, Jorge Leon, OCC – SWRCB

cc w/out enclosures:

Interested Parties (see mailing list)

California Regional Water Quality Control Board
Santa Ana Region

Cleanup and Abatement Order No. R8-2004-0042

For

Pyro Spectaculars, Inc.,
Thomas O. Peters Revocable Trust,
Thomas O. Peters
And
Whittaker Corporation

Five-acre parcel located at 2298 West Stonehurst Drive,
City of Rialto, San Bernardino County

The California Regional Water Quality Control Board, Santa Ana Region
(hereinafter Regional Board), finds that:

1. The Thomas O. Peters Revocable Trust currently owns property in Section 28, Township 1 North, Range 5 West, San Bernardino Base and Meridian, in the County of San Bernardino, State of California. The Thomas O. Peters Revocable Trust property consists of approximately five acres ("the site"), on which about 25 buildings and storage units are situated.
2. Starting in 1969, Whittaker Corporation, the former Trojan Fireworks Company, and Astro Pyrotechnics (a division of Pyro Spectaculars, Inc.) or their legal predecessors have conducted manufacturing operations on portions of the site. The manufacturing activities have been associated with onsite waste disposal practices. The site overlies the Rialto Groundwater Subbasin, and is comprised of Lots 5, 6 and 7, as shown on page 3 of Exhibit 2.
3. Aerial photographs indicate that the 5-acre site was developed in several phases, beginning as early as 1966. Evidence indicates that Tasker Industries purchased Lot 5 (approximately 1.21 acres) in 1969 and Lot 6 (approximately 1.20 acres) in 1971. AMEX Products operated a facility on these 2.41 acres. The AMEX Products facility address was 2298 West Stonehurst Drive, and included a general office, and 10 additional buildings. AMEX also operated a test range on 15 acres located approximately 3,000 feet northwest of the AMEX facility (this property is not a subject of this Order). AMEX Products designed, tested and fabricated military and commercial pyrotechnic and explosive devices at 2298 West Stonehurst Drive. Perchlorate is known to have been a component of AMEX's products. In or about 1972, Tasker Industries

merged into Whittaker Corporation. Because this transaction was a corporate merger, Whittaker Corporation assumed the liabilities of Tasker Industries. Records indicate that Whittaker Corporation thereafter became the owner of Lots 5 and 6 until it sold the property to Mr. Robert J. Kennard, who was associated with the Trojan Fireworks Company, in 1974. Mr. Thomas O. Peters then purchased Lots 5 and 6 (2.41 acres) and additional adjoining property, Lot 7 (2.62 acres), creating the approximately 5-acre site. The 5-acre site is currently owned by the Thomas O. Peters Revocable Trust.

4. Trojan Fireworks Company began operating at the 5-acre site in or about 1973. Trojan Fireworks Company manufactured commercial fireworks through 1988 at this location. Perchlorate salts are known ingredients of common fireworks.
5. On or about March 24, 1988, Pyro Spectaculars, Inc. purchased the manufacturing and display divisions of Trojan Fireworks Company, commonly known as Astro Pyrotechnics. Astro Pyrotechnics has operated as a division of Pyro Spectaculars, Inc. since that time. Astro Pyrotechnics manufactures theatrical (1.4G) fireworks and pyrotechnic articles at the site. The fireworks are shipped to off-site, licensed professional customers. The Astro Pyrotechnics facility receives raw materials (including chemicals and paper goods), and assembles various types of fireworks inside small work buildings.
6. At the current-day Astro Pyrotechnics facility, raw and laboratory grade chemicals are stored in bulk in eight of the on-site buildings. Various other buildings are used for the manufacture and storage of fireworks products. Four of the work buildings had adjacent concrete pads that were used until mid-2003 for collecting wastewater that was generated during the fireworks manufacturing process. Pyro Spectaculars, Inc. has stated that it believes that three of the pads were installed in 1997 or 1998, and the fourth pad was installed in 2000. This practice was discontinued at the direction of Regional Board staff. Prior to installation of the concrete pads, the wastes were discharged to small earthen containment basins that were lined with plastic.
7. The wastewater generated during the fireworks manufacturing process at Astro Pyrotechnics is a highly saline waste containing potassium nitrate, potassium perchlorate, and other perchlorate salts. Perchlorate salts are highly soluble and dissociate in water to form perchlorate ions. There are currently no state or federal drinking water standards for perchlorate. However, on March 11, 2004, the California Department of Health Services (DHS) established a revised drinking water Action Level (AL) for perchlorate of 6 parts per billion (ppb). An AL is a temporary safe drinking water level that is based on available studies that have been performed.

8. Perchlorate is currently present in the Rialto, Chino I and Chino II Groundwater Subbasins. The West Valley Water District, the Fontana Water Company, and the Cities of Rialto and Colton had limited or ceased the use of 20 municipal water supply wells that contained perchlorate. Wellhead treatment systems have been installed on eight of these wells, and these eight wells have been returned to service. However, the remaining 12 wells continue to be unused or are used on a limited basis.
9. Municipal water supply wells in the Rialto, Chino I and Chino II Groundwater Subbasins have been, or are likely to be, affected by the perchlorate pollution in these basins. Regional Board staff has identified numerous parties, and continues in its efforts to identify all parties that may have discharged perchlorate in these basins.
10. Perchlorate contamination was first detected in groundwater in the Rialto and Chino Groundwater Subbasins in 1997. At that time, the DHS AL for perchlorate in drinking water was 18 ppb. Two wells contained perchlorate exceeding 18 ppb and were shut down. In January 2002, the DHS lowered the AL to 4 ppb. In response to the reduced AL for perchlorate, the local water purveyors in the Rialto and Chino Groundwater Subbasins restricted or eliminated the use of additional production wells with perchlorate concentrations that exceeded 4 ppb. Between 1997 and the present, various perchlorate dischargers have been identified.
11. On November 6, 2002, pursuant to California Water Code (CWC) Section 13267, the Executive Officer directed Pyro Spectaculars, Inc. to investigate the 5-acre Astro Pyrotechnics facility.
12. On December 9, 2002, Pyro Spectaculars, Inc. submitted a work plan for investigation of soil adjacent to the concrete pads) that were used for collection of liquid waste at Astro Pyrotechnics. The proposed fieldwork consisted of five exploratory trench excavations to collect soil samples for analysis of perchlorate. On February 6, 2003, Regional Board staff visited the Astro Pyrotechnics facility and inspected the work buildings, including those used for the manufacture of fireworks. Regional Board staff observed that several of the concrete pads contained wastewater and sludge. Concrete is not an effective, permanent barrier to infiltration of liquid, and is therefore not an acceptable waste containment liner. In addition, the pads lacked splash walls, and did not have the capacity necessary to prevent overflow and runoff of waste from a significant storm event.
13. On March 3, 2003, the Executive Officer conditionally approved the work plan for the investigation of the Astro Pyrotechnics facility. The Executive

Officer's approval letter required that the work plan be revised to include the collection of soil samples from the areas immediately beneath the existing concrete pads, instead of from areas adjacent to the pads as proposed in the work plan. In addition, Pyro Spectaculars, Inc. was advised that the concrete pads were not acceptable storage facilities for waste and wastewater at the Astro Pyrotechnics facility and that it must cease the practice. The Executive Officer required the installation of permanent containment facilities, such as appropriately lined storage sumps or ponds, with adequate capacity, as well as secondary containment for the drums of chemical waste that were stored on-site.

14. In accordance with the investigation work plan approved by the Executive Officer, Pyro Spectaculars, Inc. was required to commence its field activities on July 21, 2003. Pyro Spectaculars, Inc. failed to commence the investigation by the specified date; therefore, the Executive Officer issued an administrative civil liability (ACL) complaint against Pyro Spectaculars, Inc., which has been resolved.
15. On November 6, 2003, Kleinfelder (the environmental consultant for Pyro Spectaculars, Inc.) excavated five exploratory trenches in the areas of investigation approved by the Executive Officer. The soil samples were analyzed for volatile organic compounds (VOCs), perchlorate, and electrical conductivity.
16. On December 15, 2003, Pyro Spectaculars, Inc. submitted a "Perchlorate Investigation Report" which summarized the results of Kleinfelder's soil investigations at the site. Perchlorate was found in 12 samples at the site. Samples collected at 1, 5, and 10-foot depths in four of the trenches contained perchlorate. Perchlorate concentrations ranged from 1.2 milligrams per kilogram (mg/kg) to 32 mg/kg. The highest perchlorate concentration of 32 mg/kg was detected at the 10-foot depth adjacent to the former location of one of the concrete waste disposal pads.
17. Based on the results of the soil investigations conducted by Pyro Spectaculars, Inc. at the site, it is evident that perchlorate has been discharged to soil and likely to the underlying groundwater.
18. Based on the historical evidence of suspected perchlorate discharges at the site, and prior to Astro Pyrotechnics collecting soil samples at the property, the Executive Officer issued an Investigation Order to Mr. Thomas O. Peters, on the basis of available records of his ownership of the property, on July 18, 2003. Mr. Peters was ordered to submit a work plan by August 29, 2003 for conducting an investigation to define the lateral and vertical extent of perchlorate in soil and groundwater at the site.

19. On December 18, 2003, an environmental consultant for Mr. Peters submitted a work plan for a limited perchlorate investigation at the site. The proposed fieldwork for the site consisted of 11 exploratory trench excavations to collect soil samples for analysis of perchlorate. This work plan has not been approved by Board staff, and none of the proposed work has been conducted by Mr. Peters.
20. Whittaker Corporation is the corporate successor of Tasker Industries by merger. Based on the use, storage, and disposal of explosives and their components by AMEX Products, Tasker Industries and Whittaker Corporation, the Executive Officer issued an Investigation Order to Whittaker Corporation on June 26, 2003. Whittaker Corporation was ordered to conduct a records investigation and submit a report by July 31, 2003 concerning suspected perchlorate discharges at its former Rialto facility.
21. On July 28, 2003, Whittaker Corporation submitted limited information pertaining to AMEX Products and its production activities at the site between 1969 and 1971.
22. Based on the information submitted on July 28, 2003, the Executive Officer issued a further Investigation Order to Whittaker Corporation on October 21, 2003. Whittaker Corporation was ordered to submit a work plan by December 16, 2003 for conducting an investigation to define the lateral and vertical extent of perchlorate in soil and groundwater in the vicinity of the site.
23. On January 13, 2004, Whittaker Corporation submitted a work plan for conducting further investigation activities to assess perchlorate at the site. This work plan has not been approved by Board staff, and none of the proposed work has been conducted by Whittaker Corporation.
24. Based on the facts presented herein, the evidence referred to in the Staff Report and the Exhibits attached thereto, and the testimony presented at the hearing, the Board finds that Pyro Spectaculars, Inc., Mr. Thomas O. Peters and Thomas O. Peters Revocable Trust, and Whittaker Corporation are suspected of having discharged waste, and/or have caused or permitted, or are causing or permitting, waste, i.e., perchlorate, to be discharged or deposited where it is, or probably will be, discharged into the waters of the state, specifically the Rialto Groundwater Subbasin, and have created, or threaten to create, a condition of pollution or nuisance as defined in Water Code Section 13304.
25. The beneficial uses of the Rialto Groundwater Subbasin include:
 - a. Municipal and domestic supply,

- b. Agricultural supply,
 - c. Industrial service supply, and
 - d. Industrial process supply.
26. CWC Section 13304 allows the Regional Board to recover reasonable expenses from responsible parties for overseeing cleanup and abatement activities. It is the Regional Board's intent to recover such costs for regulatory oversight work conducted in accordance with this order. Mr. Peters and Whittaker Corporation have already entered into cost recovery agreements with Regional Board staff. Pyro Spectaculars, Inc., has not entered into a cost recovery agreement with Regional Board staff, but a portion of staff's past costs has been recovered from Pyro Spectaculars, Inc. pursuant to resolution of the ACL complaint.
27. This enforcement action is being taken by a regulatory agency to enforce a water quality law. Such action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) in accordance with Section 15321, Article 19, Division 3, Title 14, California Code of Regulations.
28. Additional investigation is necessary to define the vertical and lateral extent of the perchlorate that is discharging, has been discharged, or threatens to be discharged from the site located at 2298 West Stonehurst Drive, Rialto.
29. It is appropriate to order Pyro Spectaculars, Inc., Thomas O. Peters, Thomas O. Peters Revocable Trust, and Whittaker Corporation jointly and severally to investigate and, as appropriate, clean up and abate the effects of the discharge of perchlorate at Lots 5 and 6 of the site, and to order Pyro Spectaculars, Inc., Thomas O. Peters, and Thomas O. Peters Revocable Trust jointly and severally to investigate and, as appropriate, clean up and abate the effects of the discharge of perchlorate at Lot 7 of the site.
30. A similar order may be issued at a later date to former tenants or former owners of other associated or adjacent properties, if Regional Board staff obtains additional information indicating that other specific tenants or owners have also discharged perchlorate that is present in the soil or groundwater.
31. Pyro Spectaculars, Inc. has proposed to form the Rialto Environmental Assessment Partnership (REAP), in lieu of conducting the investigation and cleanup activities that would be required at the site by this Order. The proposed partnership would sponsor a demonstration project for removal of perchlorate from the soil and groundwater in the vicinity of the site. If the REAP proposal obtains successful sponsorship from the local water


purveyors, agencies and municipalities, and is determined by the Executive Officer to be technically feasible, the Board will consider revising or amending the Order as necessary to allow future implementation of the REAP.

IT IS HEREBY ORDERED THAT, pursuant to Section 13267(b)(1), Article 4, Chapter 4, Division 7 and Section 13304, Article 1, Chapter 5, Division 7, of the California Water Code, Whittaker Corporation shall investigate and, as appropriate, cleanup and abate the effects of the discharge of waste at Lots 5 and 6, and Pyro Spectaculars, Inc., Thomas O. Peters, and the Thomas O. Peters Revocable Trust shall investigate and, as appropriate, cleanup and abate the effects of the discharge of waste at Lots 5, 6 and 7, at the property located at 2298 West Stonehurst Drive, Rialto, jointly and severally, as follows:

1. Upon approval by the Executive Officer, implement the work plans submitted in response to the Executive Officer's Investigation Orders, or submit an alternate work plan if requested to do so by the Executive Officer. The work plans shall be implemented in accordance with time schedules approved by the Executive Officer.
2. Prepare and implement additional work plans that the Executive Officer deems necessary to sufficiently characterize the lateral and vertical extent of perchlorate that is discharging, has been discharged, or threatens to be discharged to the soil and groundwater. The work plans shall be implemented in accordance with time schedules approved by the Executive Officer.
3. After the Executive Officer determines that the lateral and vertical extent of perchlorate that is discharging, has been discharged, or threatens to be discharged to the soil and groundwater has been sufficiently defined, submit a detailed remedial action plan, including an implementation schedule, to cleanup or abate the effects of the perchlorate that is discharging, has been discharged, or threatens to be discharged. The remedial action plan shall provide for replacement water service, which may include wellhead treatment, for any water supply wells determined by the Executive Officer, based on investigations conducted pursuant to Items 1 and 2, above, to be affected by the discharges. The remedial action plan and implementation schedule shall be submitted within 60 days of the Executive Officer's notification to Pyro Spectaculars, Inc., the Thomas O. Peters Revocable Trust, Thomas O. Peters, or Whittaker Corporation that the definition of the extent of perchlorate is sufficiently complete. The remedial action plan and schedule shall be subject to approval by the Executive Officer.

4. Implement the remedial action plan in 3., above, as approved by the Executive Officer.
5. Nothing in this order precludes the Executive Officer from exercising any of his authorities with respect to this site, including but not limited to requiring interim remedial actions. All references to the Executive Officer in this order shall include his delegate.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 30, 2004.


Gerard J. Thibeault
Executive Officer

Robert Thompson
The Honorable Senator Nell Soto
822 N. Euclid Ave., Suite A
Ontario, CA 91762

The Honorable Senator Nell Soto
State Capital, Room 4078 P.O. Box 942848
Sacramento, CA 94248-0001

Anthony Araiza , Jerry Eagans & León Long
West Valley Water District
P.O. Box 920
Rialto, CA 92377-0920

Barry Groveman & Steve Ellie
Musick, Peeler & Garrett
624 S. Grand Ave., Suite 2000
Los Angeles, CA 90017-3383

Christine Brown, Wendy Arano and Aaron Yue
California Dept. of Toxic Substances Control
5796 Corporate Ave.
Cypress, CA 90630

Danielle Sakai & Gene Tanaka
Best, Best & Kreiger
3750 University Ave., Mission Square
Riverside, CA 92501

Glen Yabuno & Ken Ayers
County of San Bernardino
Specialized Prosecutions Unit
412 W. Hospitality Lane, Ste. 301
San Bernardino, CA 92415-0023

Kevin P. Mayer
U.S. EPA, Region IX (Region 9)
75 Hawthorne Street, SFC-7-2
San Francisco, CA 94105-3901

Kathleen Kenealy & Gary Tavetian
California Office of the Attorney General
Deputy Attorney General
300 S. Spring St., Ste. 500 N
Los Angeles, CA 90013-1204

Mike Whitehead, Mike McGraw, Jim Bryson
& Gerald J Black
Fontana Water Company
P.O. Box 987
Fontana, CA 92335

Mike Bledsoe & Michael Wochnick
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, CA 95812-4025

Sarah Mueller, Wayne Praskins & Matt Mitguard
U.S. EPA - Region 9
75 Hawthorne Street
San Francisco, CA 94105

Susan M. Trager & Francis D. Logan, Jr.
Law Offices of Susan M. Trager
19712 MacArthur Blvd., Ste. 120
Irvine, CA 92612

Peter Fox, Tim Mim Mack & Robert Owen
City of Rialto
Public Works Department
150 S. Palm Avenue
Rialto, CA 92376

Tim Ryan & Robert Young
San Gabriel Valley Water Company
Fontana Water Company
11142 E. Garvey Ave.
El Monte, CA 91732

Tom Soto
PS Enterprises
3350 Ocean Park Blvd., Ste. 205
Santa Monica, CA 92405

Bob Bradford, Manager of Operations
Burrtec Waste Industries, Inc.
222 W. Hospitality Lane, 2nd Floor
San Bernardino, CA 92408

Richard Haberman
California Department of Health Services
Drinking Water Field Operations Branch
1040 E. Herndon Ave., Ste. 205
Fresno, CA 93720

Ken A. Miller & Art Rivera
County of San Bernardino
Public Works Dept. (Flood Control Dist.)
222 W. Hospitality Lane, 2nd Floor
San Bernardino, CA 92415-0017

Ralph Murphy & Gary Lass
Geologic Associates (GLA)
1831 Commercenter East
San Bernardino, CA 92408

Charles Whisonant
Law Offices of Charles Whisonant
620 Newport Center Drive, 11th Floor
Newport Beach, CA 92660

Joel Moskowitz
Moskowitz, Brestoff, Winston & Blinderman, LLP
1880 Century Park East., Suite 300
Los Angeles, CA 90067-1603

James Peterson
Senator Dianne Feinstein
750 B Street, Suite 1030
San Diego, CA 92101

Kevin P. Mayer
U.S. EPA, Region IX (Region 9)
75 Hawthorne Street, SFC-7-2
San Francisco, CA 94105-3901